

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR APPROVAL) CASE NO. 2006-00136
OF THE INDIRECT TRANSFER OF)
CONTROL RELATING TO THE MERGER)
OF AT&T, INC. AND BELLSOUTH)
CORPORATION)

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY
RESPONSES TO JOINT APPLICANTS' DATA REQUESTS

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad" or
"Respondent"), by counsel, hereby submits its Responses to the Data Requests propounded by AT&T,
Inc., BellSouth Corporation and BellSouth Telecommunications, Inc. (referred to herein collectively as
the "Joint Applicants").

DATA REQUEST NO. 1: Does Covad agree that, post-merger, AT&T, Inc., through its indirect subsidiary BellSouth Telecommunications, Inc., will have the financial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)?

RESPONSE: Respondent's analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market in Kentucky and in other jurisdictions is on-going. In this regard, Respondent's analysis of the proposed merger's compliance with the statutory requirements of KRS 278.020(5) cannot be progressed without the information which has been requested through the Data Requests submitted by Respondent to the Joint Applicants in this docket. Thus, Respondent's response to Joint Applicants' Data Request No. 1 is subject to further evaluation and modification. Subject to the foregoing, and based on Joint Applicants' representations and public statements concerning the merger and other information currently available to Respondent, it is expected that AT&T will have the financial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5) should the proposed merger between the Joint Applicants be authorized by the Commission and the transaction consummated and implemented as currently proposed.

DATA REQUEST NO. 2: If the response to Request No. 1 is anything other than an unqualified

“yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: *See* Respondent’s Response to Data Request No. 1 above.

DATA REQUEST NO. 3: Does Covad agree that, post-merger, AT&T, Inc., through its indirect subsidiary BellSouth Telecommunications, Inc., will have the technical ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)?

RESPONSE: Respondent's analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market in Kentucky and in other jurisdictions is on-going. In this regard, Respondent's analysis of the proposed merger's compliance with the statutory requirements of KRS 278.020(5) cannot be progressed without the information which has been requested through the Data Requests submitted by Respondent to the Joint Applicants in this docket. Thus, Respondent's response to Joint Applicants' Data Request No. 3 is subject to further evaluation and modification. Subject to the foregoing, and based on Joint Applicants' representations and public statements concerning the merger and other information currently available to Respondent, it is expected that AT&T will have the technical ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5) should the proposed merger between the Joint Applicants be authorized by the Commission and the transaction consummated and implemented as currently proposed.

DATA REQUEST NO. 4: If the response to Request No. 3 is anything other than an unqualified

“yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: *See* Respondent’s Response to Data Request No. 3 above.

DATA REQUEST NO. 5: Does Covad agree that, post-merger, AT&T, Inc., through its indirect subsidiary BellSouth Telecommunications, Inc., will have the managerial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)?

RESPONSE: Respondent's analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market in Kentucky and in other jurisdictions is on-going. In this regard, Respondent's analysis of the proposed merger's compliance with the statutory requirements of KRS 278.020(5) cannot be progressed without the information which has been requested through the Data Requests submitted by Respondent to the Joint Applicants in this docket. Thus, Respondent's response to Joint Applicants' Data Request No. 5 is subject to further evaluation and modification. Subject to the foregoing, and based on Joint Applicants' representations and public statements concerning the merger and other information currently available to Respondent, it is expected that AT&T will have the managerial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5) should the proposed merger between the Joint Applicants be authorized by the Commission and the transaction consummated and implemented as currently proposed.

DATA REQUEST NO. 6: If the response to Request No. 5 is anything other than an unqualified

“yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: *See Respondent’s Response to Data Request No. 5 above.*

DATA REQUEST NO. 7: Does Covad agree that the merger of AT&T, Inc. and BellSouth Corp. is being made in accordance with the law pursuant to KRS 278.020(6)?

RESPONSE: Unless and until BellSouth fully complies with its legal obligations to provide network elements and services to Respondent and/or adequate assurances are provided that these obligations will be met within BellSouth's service areas post merger, as outlined more fully in Response to Data Request No. 12 below, the proposed merger of AT&T, Inc. and BellSouth Corp. is not being made in accordance with the law pursuant to KRS 278.020(6) for the same reasons that the merger is not consistent with the public interest. *See* Respondent's Response to Data Request Nos. 11 and 12 below.

DATA REQUEST NO. 8: If the response to Request No. 7 is anything other than an unqualified

“yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: *See Respondent’s Responses to Data Request Nos. 7, 11 and 12.*

DATA REQUEST NO. 9: Does Covad agree that the merger of AT&T, Inc. and BellSouth Corp. is being made for a proper purpose pursuant to KRS 278.020(6)?

RESPONSE: Unless and until BellSouth fully complies with its legal obligations to provide network elements and services to Respondent and/or adequate assurances are provided that these obligations will be met within BellSouth's service areas post merger, as outlined more fully in Response to Data Request No. 12 below, the proposed merger of AT&T, Inc. and BellSouth Corp. is not being made for a proper purpose pursuant to KRS 278.020(6) for the same reasons that the merger is not consistent with the public interest. *See* Respondent's Responses to Data Requests No. 11 and 12 below.

DATA REQUEST NO. 10: If the response to Request No. 9 is anything other than an unqualified “yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: *See Respondent’s Responses to Data Request Nos. 9, 11 and 12.*

DATA REQUEST NO. 11: Does Covad agree that the merger of AT&T, Inc. and BellSouth Corp. is consistent with the public interest pursuant to KRS 278.020(6)?

RESPONSE: Unless and until BellSouth fully complies with its legal obligations to provide network elements and services to Respondent and/or adequate assurances are provided that these obligations will be met within BellSouth's service areas post merger, as outlined more fully in Response to Data Request No. 12 below, the proposed merger of AT&T, Inc. and BellSouth Corp. is not consistent with the public interest pursuant to KRS 278.020(6). *See* Respondent's Response to Data Request No. 12 below.

DATA REQUEST NO. 12: If the response to Request No. 11 is anything other than an unqualified “yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: BellSouth currently fails to meet its legal obligations pursuant to Sections 201, 202, 251 and 271 of the Telecommunications Act of 1996 to provide access to network elements and services. Specifically, BellSouth fails to provide line sharing at just and reasonable rates in accordance with its Section 271 obligations; BellSouth fails to commingle Section 251 line splitting with all of its wholesale products; and fails to provide nondiscriminatory ordering, provisioning, maintenance and repair. The broadband and voice products Respondent is inhibited from providing by BellSouth’s behavior are critical components of the competitive telecommunications landscape in Kentucky. As such, until it is clear that BellSouth will fulfill its legal obligations, this merger is not in the public interest.

DATA REQUEST NO. 13: State with specificity all facts and contentions that underlie Covad's statement in its Motion to Intervene that "[t]his case involves issues which are directly relevant to Covad's business and on-going operations." *Motion to Intervene*, paragraph 2.

RESPONSE: *See*, Respondent's Response to Data Request No. 12 above.

DATA REQUEST NO. 14: State with specificity all facts Covad expects to “develop . . . that will assist the Commission in full consideration of the proposed transaction.” *Motion to Intervene*, paragraph 3.

RESPONSE: The facts and issues which Respondent seeks to develop, and which are vital to the Commission’s statutory analysis of the Joint Applicants’ proposed merger, are reflected in the Data Requests submitted by Respondent to the Joint Applicants in this docket. Without Joint Applicants’ disclosure of the facts and documents requested for production pursuant to such Data Requests, the Commission cannot complete the full statutory review of the proposed transaction required by Kentucky law. Moreover, Respondent intends to further develop these matters in the Pre-filed Testimony which will be tendered on its behalf. *See also*, Respondent’s Response to Data Request No. 12 above.

DATA REQUEST NO. 15: Does Covad agree with Paragraph 33 of the Joint Application set forth

below:

33. Nor will the wholesale obligations of BellSouth's operating subsidiaries under interconnection agreements and orders of this Commission be affected by the merger. BellSouth's subsidiaries operating in Kentucky will still be bound to those agreements and orders post-merger closing to the same degree as before the merger, and all performance standards and other regulatory requirements that currently apply to BellSouth operating subsidiaries will be unaffected by the merger.

RESPONSE: Respondent disagrees with Paragraph 33 of the Joint Application for the reasons set-forth in Response to Data Request No. 12 above.

DATA REQUEST NO. 16: If the response to Request No. 15 is anything other than an unqualified

“yes,” state with specificity each and every fact that supports Covad’s response.

RESPONSE: *See*, Respondent’s Responses to Data Request Nos. 12 and 15 above.

Submitted to and filed with the Kentucky Public Service Commission this 11th day of May, 2006.

Respectfully submitted,

/s/ Henry S. Alford

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CERTIFICATE OF SERVICE

Counsel for Respondent DIECA Communications, Inc. d/b/a Covad Communications Company hereby certifies that a true and accurate electronic copy of this filing was transferred to the Commission via the Electronic Filing Center this 11th day of May, 2006 and filed in hardcopy document form with the Commission also on the 11th day of May, 2006. Further, consistent with the Commission's Order of April 12, 2006, notice of the filing of this Motion was served via electronic mail on all parties of record. Parties of record can access the information at the Commission's Electronic Filing Center located at <http://psc.ky.gov.efs/efsmain.aspx>.

/s/ Henry S. Alford

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